



W.P(MD)No.6588 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6588 of 2023
and
W.M.P.(MD)No.6252 of 2023

M.Muthu

... Petitioner

Vs.

1.The Accountant General,
Government of Tamil Nadu,
Chennai.

2.The Director of School Education Department,
Directorate Office,
Chennai.

3.The Chief Educational Officer,
Chief Educational Office,
Tenkasi District.

4.The District Educational Officer,
District Educational Office,
Tenkasi District.

5.The Block Educational Officer,
Block Educational Office,
Vasudevanallur,
Tenkasi District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the fourth respondent herein in his proceedings in Na.Ka.No.695/A1/2020, dated 17.09.2020 and a consequential proceedings dated 07.07.2021 and 21.03.2022 quash the same as illegal and further direct the respondents 1 & 2 to re-fix the pension pay order in PPO No.R2224924 by taking into account of the petitioner's entire period of service (ie from 29.07.1974 to 31.05.2009) in Quaide Millath Mohamed Ismail Shahib Memorial School, Puliangudi, Vasudevanallur Range, Tirunelveli District by considering the petitioner's representation dated 03.03.2023 within a time stipulated by this Court and release the arrears with interest.

For Petitioner : Mr.S.Vashik Ali
for Mr.R.Murugan

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R2 to R5
: Mr.P.Gunasekaran
Standing Counsel for R1

ORDER

Heard the learned counsel on either side.

2. The petitioner was appointed in an aided minority school in the year 1974. He was given designation as Headmaster in the year 1996. Subsequently, the petitioner was made as Secondary Grade Teacher by



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the management. This gave rise to dispute between the petitioner on the one hand and the management on the other. The petitioner went away on long leave. The petitioner later rejoined as Secondary Grade Teacher and gave application on 23.09.2006 to go on voluntary retirement. The case of the petitioner is that the application was not accepted and that he continued to work as Headmaster and eventually reached superannuation and retired as Headmaster on 31.05.2009. However, the department chose to insist that the petitioner retired as Secondary Grade Teacher and went on voluntary retirement on 23.12.2006. The petitioner was not even paid his regular pension. He was getting only provisional pension. He therefore filed W.P.(MD)No.3224 of 2012 for directing the department to sanction his pensionary benefits by taking into account his entire period of service. According to the petitioner, his service ended only on 31.05.2009. The said writ petition was taken up along with two other writ petitions. On 05.08.2021, all these writ petitions were closed as infructuous by citing the order dated 17.09.2020 passed by the District Educational Officer, Sankarankovil. Challenging the said order, the present writ petition has been filed.



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3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Additional Government Pleader appearing for the respondents 2 to 5 on the other hand would submit that the impugned order is a speaking order and well reasoned and that it does not call for interference.

5. I carefully considered the rival contentions and went through the materials on record. The learned Additional Government Pleader would of-course raise a technical plea that the relief now sought for is identical to what was sought in W.P.(MD)No.3224 of 2012. The said writ petition was closed as infructuous. This Court while closing the said writ petition as infructuous specifically referred the order dated 17.09.2020 which is impugned in the present writ petition. The learned Additional Government Pleader would point out that the petitioner has failed to obtain liberty from this Court to question the said order. Though the



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learned Additional Government Pleader is technically correct, I do not want to non-suit the petitioner on that ground and would rather go into the issue on merits.

6. The impugned order clearly states that the petitioner had given affidavit on 26.03.2010 stating that he had gone on voluntary retirement with effect from 23.12.2006. The impugned order further reads that the petitioner has been paid provisional pension with effect from 24.07.2006. The impugned order makes a specific reference to the letter dated 28.07.2010 written by the petitioner himself conceding this aspect. In the affidavit filed in support of the writ petition, this factual aspect have not been specifically challenged. The learned counsel appearing for the petitioner would of-course contend that a person who has already been superannuated will be forced to make some concessions in order to receive pension and that the same should not be put against him. According the learned counsel, such concession must be seen as having been brought under coercive circumstances and that they will not operate as estoppel. I will not reject the said contention of the learned counsel appearing for the petitioner. But then, the limitation of the writ court



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should also be appreciated. The petitioner would claim that even after the last week of December 2006, the petitioner continued to serve as Headmaster of the school in question. The stand of the department is that some records appear to have been subsequently created. There are no contemporaneous records indicting that the petitioner's application for voluntary retirement was rejected by the management and that he continued to work in the capacity of the Headmaster till 31.05.2009.

7. I am confronted with a disputed question of fact. In this background, I am left with no other option but to rely on the petitioner's own affidavit made in the year 2010 which is referred to specifically in the impugned order which finding has not been controverted in the affidavit filed in support of the writ petition. The order impugned in the writ petition therefore, does not warrant interference.

8. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To
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Directorate Office,
Chennai.
- 2.The Chief Educational Officer,
Chief Educational Office,
Tenkasi District.
- 3.The District Educational Officer,
District Educational Office,
Tenkasi District.
- 4.The Block Educational Officer,
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G.R.SWAMINATHAN, J.

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